



December 30, 2011

The Honorable Adam Hamm
Insurance Commissioner
600 E. Boulevard Avenue, 5th Floor
Bismarck, ND 58505-0320

Re: State External Review Process Redetermination

Dear Commissioner Hamm:

This letter follows up on North Dakota's request for a redetermination of its external review laws. The Affordable Care Act ensures that health care insurance consumers have access to strong external review processes under section 2719 of the Public Health Service Act (PHS Act).¹ In implementing this provision, the Departments of Health and Human Services (HHS), Labor, and the Treasury (the Departments) have focused on ensuring that State external review processes can be maintained to the extent possible.² We have actively worked with States to provide guidance and assist States seeking to amend their external review processes to meet federal standards.

Through this process, the Departments have established two categories of State external review processes that will satisfy these statutory standards: 1) a State external review process that meets the 16 minimum consumer protections described in paragraph (c)(2) of the regulations as authorized under section 2719(b)(1) of the PHS Act (hereinafter referred to as "NAIC-parallel process"); or 2) a State external review process that meets the minimum standards established by the Secretary of Health and Human Services through guidance under section 2719(b)(2) (hereinafter referred to as "NAIC-similar process").³

We applaud your efforts and progress to date to provide a strong external review process. After reviewing the information North Dakota submitted, including HB 1476, the Center for Consumer Information and Insurance Oversight (CCIIO) has determined that North Dakota's external review process does meet the standards of the NAIC-similar process. Therefore, issuers of non-

¹ Section 2719 does not apply to grandfathered health plans. See interim final regulations regarding status of a group health plan or health insurance coverage as a grandfathered plan under section 1251 of the Affordable Care Act issued on June 17, 2010 (75 FR 34538), amended on November 17, 2010 (75 FR 70114).

² Regulations implementing PHS Act section 2719 were published on July 23, 2010, at 75 FR 43330, and amended on June 24, 2011, at 76 FR 37208 (corrected on July 26, 2011, at 76 FR 44491).

³ HHS established these minimum standards in Technical Release 2011-02 on June 22, 2011, which can be found at: http://cciio.cms.gov/resources/files/appeals_srg_06222011.pdf. Beginning January 1, 2014, issuers of non-grandfathered health insurance plans and policies in a State with an external review process that does not satisfy the standards of the NAIC-parallel process will need to participate in a federally administered process.

grandfathered health insurance plans and policies in the State of North Dakota must comply with North Dakota's external review process.

With regard to one of the elements articulated in the federal standards, we note that there is no explicit provision in HB 1476 addressing deemed exhaustion of internal appeals for either the issuer's failure to meet internal appeals process timelines (required for NAIC-similar) or the issuer's failure to comply with the internal appeals requirements (required for NAIC-parallel). However, we also note that HB 1476 states that an issuer must meet the minimum federal requirements including 45 CFR 147.136. Read as a whole, we understand your statute to require deemed exhaustion of internal appeals when an issuer fails to comply with the internal appeals requirements, except for de minimis violations as enumerated in 45 CFR 147.136(b)(2)(ii)(F)(2). If CCIIO receives information that issuers are not permitting deemed exhaustion of internal appeals in accordance with the standard set forth in the regulations implementing the Affordable Care Act, CCIIO will revisit North Dakota's compliance with this standard.

Additionally, CCIIO has determined that North Dakota's external review process does not meet all of the standards of the NAIC-parallel process. The following summarizes the components of North Dakota's external review process that do not meet the standards of an NAIC-parallel process.

The NAIC-parallel process requires that the IRO must maintain written records and make them available upon request to the State, substantially similar to section 15 of the NAIC Uniform Model Act. North Dakota's law does not contain external review reporting requirements that are substantially similar to section 15 of the NAIC Uniform Model Act. While the written records provision satisfies the NAIC-similar standard, it does not meet the NAIC-parallel standard.

We remain committed to working in partnership with your State to strengthen your external review process. Our goal is to ensure external reviews are conducted under State law, and we will provide whatever assistance we can to work with you and your State in the future to meet that goal.

Please note in order to continue to be considered an NAIC-similar process until January 1, 2014 (or, if earlier, North Dakota is determined to meet the standards of NAIC-parallel process) North Dakota may not reduce the consumer protections in its external review process below the level that applies as of December 30, 2011.

This finding is a final determination. If North Dakota changes its external review process in the future, North Dakota may request a new determination at any time by sending a letter to the attention of Ellen Kuhn, Director of the Appeals program in CCIIO at the Centers for Medicare & Medicaid Services (CMS) at externalappeals@cms.hhs.gov. Please include the reason(s) why you believe that North Dakota's external review process does meet the NAIC-parallel standards along with supporting documentation that you would like CCIIO to consider. CCIIO will re-evaluate North Dakota's external review process and issue a redetermination within 30 days of receipt of your completed re-evaluation request.

As always, CCIIO welcomes questions from state regulators and remains available to provide technical assistance on proposed modifications to the external review processes. Please feel free to contact Wendi Moy Akin at Wendi.Akin@cms.hhs.gov with any questions or concerns.

Sincerely,



Steven B. Larsen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight

cc: Rebecca Ternes